

**DOCKET NO. 453-05-5356.M2
MDR NO. M2-05-0839-01**

—		§	BEFORE THE STATE OFFICE
	Petitioner	§	
		§	
VS.		§	OF
		§	
TEXAS MUTUAL INSURANCE COMPANY,		§	
Respondent		§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Claimant__ requested a hearing on an Independent Review Organization’s (IRO) decision denying him preauthorization for an IDET surgical procedure in his lumbar spine.¹ The IRO denied the requested surgery because __had an inconclusive discogram study. This decision agrees with the IRO and concludes that the requested IDET surgery is not medically reasonable or necessary. Therefore, __request for preauthorization is denied.

I. JURISDICTION & HEARING

There were no challenges to notice or jurisdiction, and those matters are set forth in the findings of fact and conclusions of law without further discussion here. Administrative Law Judge (ALJ) Thomas H. Walston conducted a hearing in this case on May 18, 2005, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, Austin, Texas. Claimant__ appeared by telephone. Attorney Katy Kidd appeared on behalf of Texas Mutual Insurance Company (TMI). The hearing concluded and the record closed the same day.

¹ IDET refers to intra-discal electro-thermal. In involves inserting a tube into the affected disc; then an electrode heats the disc and “cooks” the affected disc material.

II. DISCUSSION

A. Introduction

The evidence established that Claimant ___ is a 40-year-old male who injured himself at work on ___, while lifting a hydraulic cylinder with a co-worker. He has suffered from persistent low back pain since the accident. When the accident occurred, TMI provided workers compensation insurance coverage to ___ employer. ___ sustained a second back injury at work on ___, but TMI no longer insured ___ employer for that injury.

On November 23, 2004, Dr. Dean Smith requested preauthorization for an IDET procedure for ___ at L5-S1. TMI denied the request, noting that ___ had only a mild bulge at L5-S1, and a March 2004 MRI showed that the disc actually had a better appearance than in an October 2002 MRI. TMI also stated that “the science behind the technique is not good.” Dr. Smith requested TMI to reconsider its denial of the IDET procedure. However, on December 14, 2004, TMI again denied preauthorization. For this denial, TMI also pointed out that Dr. Smith’s request indicated that ___ then current problems were related to his injury of ___, not his ___ injury.

___ appealed the adverse preauthorization decision to the Texas Workers’ Compensation Commission, which referred the matter to an IRO. On March 18, 2005, the IRO upheld the TMI’s denial of preauthorization. The IRO reviewing doctor stated his rationale as follows:

This injured individual’s discogram is inconclusive as all three levels gave a mild pain response, and more than one level showed a tear. Furthermore, the second opinion from Dr. Pacheco recommends open discectomy, not IDET.

___ timely requested a contested case hearing to challenge the IRO’s decision.

B. Parties' Evidence and Arguments

Both ___ and Carrier placed into evidence various medical records and other documents. ___ testified in his own behalf, and Dr. Paige Nelson testified for TMI. No other witnesses testified.

Medical Records:

Some of ___ medical records were introduced into evidence, but there are significant gaps in the records. Those offered into evidence show the following:

- 3/13/03 Dr. Peter H. Robinson - TWCC arranged examination; complaints of constant back pain; neurological exam normal; straight-leg raising positive at 50 degrees bilaterally; diagnosed sacroiliitis on the right; 0% impairment; maximum medical improvement reached on 3/13/03.
- 7/7/03 Dr. E.S. El-Kayan - EMG showed minimal changes suggestive of mild, early right S-1 radiculopathy; no significant neuropathy of lower extremities shown.
- 2/18/04 Dr. Dean E. Smith - pain in tailbone radiating to right buttock becoming more severe; continue working light duty.
- 3/5/04 Desert Imaging - MRI of lower spine; mild L5-S1 degenerative disc disease with mild broad central disc protrusion at L5-S1 level. A Degree of disc bulge is somewhat less than on 10/18/02 study. @ No nerve compression or other significant abnormality.
- 3/24/04 Dr. Smith - some lower back and right buttock pain; working light duty; discussed possible IDET procedure in the future.
- 4/21/04 Dr. Smith - pain more in sacrum, less radiating pain to legs; recommended second epidural steroid injection.
- 5/19/04 Dr. Smith - epidural steroid injection helped, patient doing well.
- 6/30/04 Dr. Smith - epidural steroid injection helped, but pain returning.

- 7/28/04 Dr. Jose Luis Villarreal - lumbar epidural steroid injections [apparently, the third injection].
- 10/18/04 Dr. Smith - continued complaints of pain in lumbar spine and bilateral extremities; requested discography.
- 11/1/04 Dr. Paige Nelson - recommended approval of lumbar discography requested by Dr. Smith.
- 11/5/04 Dr. Emmett Smiley - CT scan of lumbar spine; L3-4 - partial tear; L4-5 - normal appearance; L5-S1 - some degree of degeneration with posterior annular tear and a central protrusion. Discogram - ___ expressed only mild degree of a deep aching sensation while each disc was injected; all symptomatology was right-sided and minimal.
- 11/10/04 Dr. Smith - continued complaints of pain in lumbar spine and bilateral extremities; will request IDET procedure.
- 12/8/04 Dr. Smith - ___ sustained a new injury to lumbar spine on___; unable to work.
- 12/15/04 Dr. Smith - ___has herniated disc at L5-S1; recommends surgery.
- 1/19/05 Dr. Smith - believes IDET procedure is medically necessary.

___(Claimant)

In his testimony, ___ described his accident and stated that he continued working until his second injury on___. However, he stated that his pain never stopped after the first injury. ___stressed that his treating doctor has recommended the IDET procedure. He also pointed out that TMI's consultant, Dr. Nelson, previously preauthorized him for a discogram and stated that he was a surgical candidate. In argument, ___stated that he believed the doctors were truthful but had an honest difference of opinion.

TMI:

Dr. Paige Nelson testified for TMI. He is a Texas Workers' Compensation Commission (TWCC) approved doctor and is board certified in orthopedic surgery. He reviewed ___ medical records but has not actually examined or treated ___. Dr. Nelson noted that ___ had no neurological deficits from his first injury in 2002, even though he had a diagnosis of ruptured lumbar discs. Dr. Nelson stated that an MRI performed on March 5, 2004, showed that ___ had some disc protrusion at L5-S1, but it was actually less of a protrusion than shown in a previous MRI in 2002. He also noted that ___ had three sets of epidural steroid injections beginning July 28, 2004, but these did not provide much relief.

Dr. Nelson acknowledged that in November 2004, he advised TMI to approve preauthorization for ___ to have a discogram, and he stated at that time that ___ was probably a surgical candidate. However, Dr. Nelson stated that he was not referring to an IDET procedure as the appropriate surgery. He explained that an IDET procedure can provide relief in some cases when the patient shows true discogenic concordant pain in a discogram procedure. Here, however, ___ discogram procedure did not produce concordant pain. Therefore, after the discogram, Dr. Nelson no longer believes ___ is a surgical candidate.

Dr. Nelson also testified that IDET procedures are generally not appropriate when a patient has disc problems at more than one level, as with ___. Therefore, in Dr. Nelson's opinion, an IDET procedure is not medically reasonable and necessary for ___. Dr. Nelson also believes that ___ current problems are more likely related to his ___ injury than his ___ injury at issue in this case. In his view, an appropriate course of treatment for ___ would be a good, strong exercise program with pain medication as needed.

TMI noted that ___ has the burden of proof, and it argued that Dr. Nelson's testimony, the discogram results, and the IRO decision support the conclusion that an IDET surgery is not

medically necessary for ___ for his ___ injury.

B. ALJ's Analysis and Decision

The ALJ finds that ___ did not establish that an IDET procedure is medically reasonable and necessary for the treatment of his compensable injury of ___. Therefore, the ALJ upholds the IRO decision. Although ___. has evidence of a bulging, torn disc, the bulge was minimal and there was no evidence of nerve root compression. And as noted by Dr. Nelson, the MRI performed March 5, 2004, actually showed the bulge had decreased when compared to an MRI performed October 18, 2002. Further, the discogram performed November 5, 2004, did not show concordant pain that would suggest the L5-S1 disc was the source of ___ pain. ___ offered insufficient evidence to overcome these facts and the IRO decision. Therefore, the ALJ does not order preauthorization for ___ to receive an IDET surgical procedure.

III. FINDINGS OF FACT

1. Claimant ___ suffered a compensable injury to his low back on ___, while lifting a hydraulic cylinder with a co-worker.
2. ___ had persistent low back pain after the accident but continued to work light duty.
3. An EMG performed July 7, 2003, showed ___ had only minimal changes and no significant neuropathy of the lower extremities.
4. An MRI performed March 5, 2004, showed ___ had mild L5-S1 degenerative disc disease with a mild broad central disc protrusion at the L5-S1 level. However, the MRI showed no nerve compression or other significant abnormality, and the L5-S1 disc bulge in March 2004 was less than shown on an October 18, 2002 MRI.
5. ___ suffered a second compensable injury to his lower back on ___, which made his back symptoms worse. He stopped working at that time.
6. A discogram performed on ___ on November 5, 2004, showed only mild aching sensation and minimal symptomatology. The discogram did not produce concordant pain.
7. On November 23, 2004, Dr. Dean Smith requested preauthorization for an IDET surgical

procedure for ___ at L5-S1.

8. On November 29, 2004, Texas Mutual Insurance Company (TMI) denied Dr. Smith's request as medically unnecessary. TMI noted that ___ had only a mild bulge and that the March 5, 2004, MRI showed that the disc actually had a better appearance than it did in October 2002.
9. On December 9, 2004, Dr. Smith requested TMI to reconsider preauthorization for an IDET procedure for ___.
10. On December 14, 2004, TMI again denied Dr. Smith's request due to lack of medical necessity, noting that ___ symptoms were related to his injury of ___, instead of his ___ injury.
11. ___ requested medical dispute resolution.
12. March 18, 2005, the Independent Review Organization (IRO) denied ___ appeal and denied preauthorization for the requested IDET procedure because ___ discogram was inconclusive.
13. ___ requested a hearing before the State Office of Administrative Hearings, seeking to reverse the IRO's denial of preauthorization for an IDET surgical procedure.
14. An IDET surgical procedure at L5-S1 is not medically reasonable or necessary because ___ discogram did not indicate that ___ L5-S1 disc is the source of his back pain.
15. A hearing was conducted May 18, 2005, and the record closed the same day.
16. ___ and Texas Mutual Insurance Company attended the hearing.
17. All parties received not less than ten days notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
18. All parties were allowed to respond and present evidence and argument on each issue involved in the case.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing, including the authority to issue a decision and order. TEX. LABOR CODE ANN. § 413.031(k).
2. All parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. ___ has the burden of proof by a preponderance of the evidence.
4. An IDET surgical procedure at L5-S1 is not medically reasonable or necessary for the proper diagnosis and treatment of ___. TEX. LABOR CODE ANN §§401.011(19) and 408.021.
5. ___ appeal should be denied and Texas Mutual Insurance Company should not be required to pay for an IDET surgical procedure at L5-S1 for R.M.

ORDER

IT IS, THEREFORE, ORDERED that ___ appeal is denied and preauthorization is denied for ___ to receive an IDET surgical procedure at L5-S1.

SIGNED June 16, 2005.

**THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**